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OGC 76-4424

3 August 1976

MEMORANDUM FOR: [REDACTED] Office of Legislative Counsel

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FROM : [REDACTED]  
Office of General Counsel

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SUBJECT : Senate Bill 3572, 6 June 1976

1. Factual Situation: Office of Legislative Counsel has requested the views of OGC on how Senate Bill 3572, attached hereto, would affect hiring and contracting procedures. That bill is an amendment to 5 U.S.C. section 3301, and states "no individual may be admitted into the civil service unless he is a citizen of the United States."

2. Conclusion: Senate Bill 3572 is not intended to affect the Agency-- adversely or otherwise. However, there does exist the remote possibility that the bill could be interpreted so as to interfere with Agency activities. It is therefore recommended that Senator Allen be persuaded to modify the bill so as to substitute the words "competitive civil service" for the words "civil service." Since Agency personnel clearly do not belong to the classified or competitive civil service, such a change would eliminate all cause for Agency concern with the bill.

3. CIA Employment of Aliens: The Agency is quite thoroughly restricted from hiring aliens in almost any context or capacity by virtue of [REDACTED] which states:

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This paragraph prescribes the security criteria and investigative requirements governing the security clearances of the following categories of Agency personnel: staff employees, staff agents, military and civilian personnel detailed or assigned to CIA and placed in staff positions, consultants, and contract employees who are to have staff-like access to Agency installations or information. The same security criteria and investigative requirements apply to contractor personnel operating on behalf of the Agency at the TOP SECRET level...

b. POLICY

(1) In the discharge of this responsibility, it is imperative that personnel within the meaning of the introductory paragraph above be persons: ...

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(b) Who have been citizens of the United States for at least five years.

(c) Whose spouses are citizens of the United States.

The only clear exception to the above policy is described [redacted] and 25X1  
employment of aliens under that section requires approval of either the  
Director of Security or the DCI. [redacted] states that the Director of Security 25X1  
or the DCI "will make final security decision (sic) as to the acceptability of  
the individual for assignment to or retention in CIA." Such being the case  
it is anticipated that aliens would be employed by the Agency only in rather  
unusual circumstances, e.g., where the alien possesses unique skills or  
knowledge. It is therefore in the best interests of the Agency to preserve our  
options by encouraging appropriate modification of S. 3572.

4. CIA Relationships to Civil Service Regulations: 5 U.S.C. section  
2101 defines "civil service" and that definition could arguably include employees  
of the Central Intelligence Agency.

(1) the 'civil service' consists of all appointive positions  
in the executive, judicial, and legislative branches of the government STAT  
of the United States, except positions in the uniformed services.



5. In addition to these discretionary exemptions from the Civil  
Service statutes and regulations, the Agency enjoys certain statutory exemptions.  
For example: 5 U.S.C.A. §5102 exempts the Agency from the Classification  
Act of 1949; 5 U.S.C.A. §4301 exempts the Agency from the Performance Rating  
Act of 1950; 5 U.S.C.A. § 2953 exempts the Agency from part of the Civil  
Service Act of 1883; 42 U.S.C.A. §4561 exempts the Agency from the Civil  
Service Commission Alcoholic Abuse Program; 21 U.S.C.A. §1180 exempts the  
Agency from the Civil Service Commission Drug Abuse Program.

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6. The President of the United States has also acted to exclude the CIA from the jurisdiction of the Civil Service Commission. Executive Order 10805 (3 C.F.R. 328, 1950-63, 18 February 1959) exempts the Agency from certain portions of the Government Employees Training Act. The Agency was again exempted from the Commission's jurisdiction by Executive Order 10987 (3 C.F.R. 519, 1959-63, 17 January 1962), which order dealt with employee appeals from adverse action. A similar exclusion is found in Executive Order 11491 (3 C.F.R. 191, 1969 Comp., 29 October 1969), concerning the rights of Government employees to join labor organizations.

7. On the basis of the statutory references cited in the preceding paragraph it may be stated that the CIA, as a matter of law, is not subject to the Classification Act of 1949 (which establishes the competitive civil service); nor is it subject to any of those civil service statutes that specifically exempt it; nor is it subject to any other laws which, in the opinion of the DCI, may tend to jeopardize national security if applied to the CIA. It should be noted at this point that the CIA is subject to those civil service statutes that neither expressly exempt it nor involve national security matters or procedures.

8. Senate Bill 3572: Senate Bill 3572, as presently constituted, is an amendment to 5 U.S.C.A. § 3301. The annotation to that section discloses that the Civil Service rules derived from §3301 do not apply to employees in the "excepted service." (Rule 1.1, 1976 Supplement, page 266) The excepted services is defined in Rule 1.4(a) of the same section as follows:

The excepted service shall include all civilian positions in the executive branch of the government which are specifically excepted from...the competitive service by or pursuant to statute... §STAT (1976 Supplement, page 267) [See also 5 U.S.C.A. §2103(a).]

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9. Summary: Section 3301 applies solely to the competitive civil service, which excludes the CIA. At least that is the position taken by Rule 1.1 of the Civil Service Commission. The language of S. 3572, however, applies to the entire civil service, and it is an amendment to §3301. It would therefore be most desirable to clarify S. 3572 by substituting "competitive civil service" for "civil service." The bill's sponsors and proponents should have no objection to such a modification, and the change would render the bill inoffensive to Agency operations.

10. The CIA is part of the "unclassified (excepted) civil service." As such, it is not subject to those civil service statutes which: (1) apply solely to the competitive civil service; (2) specifically exempt the Agency from their provisions; or (3) are determined by the DCI to expose to unauthorized disclosure intelligence sources or methods, or the organization, functions, names, official titles, salaries, or numbers of personnel.



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Office of General Counsel  
General Law Division

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